

**STATE OF INDIANA  
BEFORE THE ALCOHOL & TOBACCO COMMISSION**

**IN THE MATTER OF  
THE PERMIT OF:**

**JOETTE J. SURRISI  
D/B/A CITY TAVERN  
415-A LAKE SHORE DRIVE  
CULVER, IN 46511**

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**PERMIT NO. RR50-20074**

**Applicant.**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**I. BACKGROUND OF THE CASE**

Joette J. Surrisi d/b/a City Tavern ("Applicant" or "Permittee"), 415-A Lake Shore Drive, Culver, Indiana ("permit premises"), permit number RR50-20074, pro se, is the Applicant for a renewal of a 210-1 Alcohol and Tobacco Commission ("ATC" or "Commission") liquor, beer and wine permit. The application was assigned to the Alcoholic Beverage Board of Marshall County ("Local Board"). The Local Board held a hearing on December 1, 2009 ("LB Hearing") and voted three (3) to one (1) to deny the application. The ATC adopted the Local Board's recommendation on December 15, 2009, at its regular public meeting.

The Applicant filed a timely Notice of Appeal and the matter was assigned to ATC Hearing Judge E. Edward Dunsmore ("Hearing Judge"). An appeal hearing was held on March 3, 2009, ("Appeal Hearing") and at that time, witnesses were sworn, evidence was received and the matter was taken under advisement. The Hearing Judge, having read the typed transcript of the LB Hearing, the evidence submitted to the ATC during the Appeal Hearing, and the contents of the entire ATC file, as well as having taken official notice of the same, as well as the codes and standards adopted by this state, now tenders his Findings of Fact and Conclusions of Law to the Commission for its consideration.

**II. PROCEDURAL HISTORY**

1. On September 23, 2009 Applicant filed its Application for a Renewal of Permit.
2. On December 1, 2009 the Local Board held a hearing and voted three (3) to one (1) to deny the application.
3. On December 15, 2009 the ATC adopted the Local Board's recommendation.
4. On December 24, 2009 the Applicant timely filed its request for administrative review and request for appeal hearing within the fifteen (15) day deadline required by 905 IAC 1-36-2.
5. No remonstrators filed a petition for intervention, as required by 905 IAC 1-36-2.
6. On March 3, 2009 the Hearing Judge conducted a hearing regarding the Applicant's appeal.

### **III. EVIDENCE BEFORE THE LOCAL BOARD**

A. The following individuals testified before the Local Board in favor of the Applicant in this case:

1. Joette J. Surrisi, Applicant and Permittee.
2. Larry Surrisi, husband of Applicant and Permittee.

B. The following individuals testified before the Local Board against the Applicant in this cause:

None. However, since this was a renewal of an existing permit, the local board conducted questioning to assure that the requirements for renewal were met.

C. The following evidence was introduced and admitted before the Local Board in favor of the Applicant in this cause:

None.

D. The following evidence was introduced and admitted before the Local Board against the Applicant in this cause:

1. Indiana State Excise Police incident reports (including narrative reports) dated February 23, 2009 and July 24, 2009 covering the period from January 1, 2009 through October 22, 2009.

### **IV. EVIDENCE BEFORE THE COMMISSION**

A. The following individuals testified before the Commission in favor of the Applicant in this cause:

1. Joette J. Surrisi, Applicant and Permittee.
2. Larry Surrisi, husband of Applicant and Permittee.

D. The following individuals testified before the Commission against the Applicant in this cause:

None

C. The following evidence was introduced and admitted before the Commission in favor of the Applicant in this cause:

None.

D. The following evidence was introduced and admitted before the Commission against the Applicant in this cause:

1. The transcript of the Local Board hearing and the entire contents of the ATC file.

## **V. FINDINGS OF FACT**

1. Joette J. Surrisi, d/b/a City Tavern ("Applicant", or "City Tavern"), located at 415-A Lake Shore Drive, Culver, Indiana 46511, is an applicant for an renewal of ATC type 210-1 liquor, beer and wine permit under permit #RR50-20074. (ATC File)
2. On Tuesday, March 24, 2009, Indiana State Excise Police Officer Javier Arroyo observed the Applicant serving alcohol at the permit premises, while the permit for the premises was expired, having expired in January, 2009. The Applicant later entered into a settlement offer admitting the violation. (ATC File)
3. On Friday, August 21, 2009, Indiana State Excise Police Officers Nicholas Canal and Brandon Thomas conducted an alcohol compliance check at the permit premises. As a result, the Applicant was cited for one (1) count of sale of alcoholic beverage to a minor (IC 7.1-5-7-8) and one (1) count of allowing a minor to loiter (IC 7.1-5-7-10). While speaking to the owner/Applicant's husband, Mr. Surrisi, Officers Canal and Thompson were unable to locate a valid premise permit. The permit provided them had expired in January, 2009. Mr. Surrisi stated that he had a letter of extension in his safe deposit box at his bank. He was informed that the letter of extension must be kept at the permit premises and that the Excise Police would stop by on a future date to verify the letter of extension. Mr. Surrisi stated he understood and would bring the letter of extension to the permit premises. (ATC File; LB Hearing; Appeal Hearing)
4. On Saturday, September 12, 2009, Officer Arroyo entered the permit premises. He did not observe any customers drinking alcoholic beverages. He asked the owner/Applicant to see the premises permit. The Applicant said she did not know where the permit was. Applicant's husband, Mr. Surrisi, said the permit was in the office. The Officer searched the office of the permit premises and did not find a permit. Applicant's husband, Mr. Surrisi, then told Officer Arroyo that there was a letter of extension in his safe deposit box at the bank. Officer Arroyo informed Mr. Surrisi that he (Officer Arroyo) knew about the compliance check violation of August 21, 2009, and was also aware that Officer Canal had instructed him to bring the letter of extension to the permit premises. Officer Arroyo informed Mr. Surrisi that the letter of extension should be faxed to Officer Arroyo on Monday, September 14, 2009, at the Michigan City office. Mr. Surrisi agreed to do so. Officer Arroyo never received the fax from Mr. Surrisi. (ATC File; LB Hearing; Appeal Hearing)
5. On October 6, 2009, Excise Officer Michelle Trauber informed District 1, Michigan City Officers that City Tavern had received a final inspection prior to having the permit taken out of escrow. City Tavern's permit had been placed in escrow in January, 2009, due to lack of tax payments after the permit had expired. Officer Trauber also stated that she had spoken to Mr. Surrisi and he informed her that the premises had not been selling

alcoholic beverages since the permit was placed in escrow in January. (ATC File; LB Hearing; Appeal Hearing)

6. Officer Arroyo informed Officer Trauber of the operating on an expired permit violation in March and the compliance check violation in August, as well as the conversations with Mr. Surrisi regarding the letter of extension supposedly being in the safe deposit box at the bank, and the failure to produce or fax the letter of extension. (ATC Hearing; LB Hearing; Appeal Hearing)
7. On Thursday, October 22, 2009, Indiana State Excise Police Officers Rich and Arroyo entered the City Tavern and asked to speak to the owner or manager. The owner, Joette J. Surrisi, appeared and asked Officer Arroyo if he had seen the letter of extension in the office. Officer Arroyo stated he had not. Joette provided a letter of extension issued in late September, 2009. Officer Arroyo informed her that she would be receiving a violation for operating on an expired permit, failure to display permit and for the compliance check violation regarding the earlier violations. During this visit, Mr. Surrisi called and spoke to Officer Arroyo. Officer Arroyo advised of the violations the permit premises would be receiving. He also informed Mr. Surrisi of the his conversations with Officer Trauber and her indications of what he (Mr. Surrisi) had told her regarding the permit premises not selling alcohol while the permit was in escrow. Officer Arroyo then issued violations for operating on an expired permit (one count) and failure to display permit (two counts). (ATC File; LB Hearing; Appeal Hearing)
8. On Thursday, December 31, 2009, Indiana Excise Police officers Kayla Dawson and Jeremy Reed conducted an investigation at the City Tavern. The Officers were responding to information that the permit premises was operating on an expired permit and was purchasing alcohol from CVS in Culver and Sam's Club in Mishawaka. (ATC File)
9. Officer Dawson searched the ATC permit database and knew prior to arriving that the letter of extension for the City Tavern had expired on December 25, 2009. Officers Reed and Dawson entered the premises and sat at the bar. They each ordered a Miller Lite beer. The bartender served each of them and they paid for the beers. The self-proclaimed owner, Mr. Surrisi, approached the Officers and asked if they were Excise Police. The Officers answered that they were. Upon being asked how he knew the Officers were Excise Police, Mr. Surrisi stated that the waitress/bartender remembered seeing Officer Dawson at a server training program in Culver earlier in the month. (ATC File)
10. Officer Dawson went to her vehicle and obtained her identification and re-entered the premises. Mr. Surrisi was asked to produce the business permit. He said it was in the office and that he would get it. Officer Dawson asked him if he was the manager and he stated he was owner, and then added that he and his wife were the owners. Mr. Surrisi then provide the letter of extension that had expired on December 25, 2009. Officer Dawson asked Mr. Surrisi if he had renewed the business permit, or if there was another letter of extension. He stated no and that he had until January 22, 2010. Officer Dawson informed him that the letter of extension had expired and showed him the expiration date located on the letter. (ATC File)

11. Officer Dawson completed the inspection of the premises and found no signs of retail to retail sales as complained of. While in the office, Officer Dawson found a letter of extension that had expired January 22, 2009, and one that expired September 2009. Officer Dawson asked Mr. Surrisi what the premises did from January 2009 through September 2009 and he stated the business was open and operating without a permit. Officer Dawson informed him that these actions were illegal and unacceptable. Officer Dawson informed Mr. Surrisi that the business would be receiving a notice of violation for operating on an expired permit and failure to post permit. (ATC File)
12. The permit violations of: 1) furnishing alcoholic beverage to minor; 2) operating on expired permit; and 3) failure to display permit from the August 2009 and October 2009 alleged violations are pending with the ATC prosecutor and are scheduled for prehearing conference. The December 31, 2009 alleged violations have not yet been scheduled for prehearing conference. (ATC File)
13. The permittee and her husband maintain:
  - a) That the local board would have voted in favor of the approval of the permit, or would have at least split 2-2, but for the Excise Officer going over and over the details of the report of violations and appearing to be soliciting a NO vote, and if the written and recorded transcript of the local board hearing do not reflect this then it is because the tape recorder was turned off during the hearing.
  - b) That the permittee has held four permits in Culver over the past ten years and has operated two restaurants without violation until 2008. Due to the permittee experiencing financial setbacks in 2008-2009, the permittee made poor choices and requests at least a probationary status with a chance to keep the permit.
  - c) That they do not deny the permit violations as charged.  
(ATC File; LB Hearing; Appeal Hearing)

#### **IV. CONCLUSIONS OF LAW**

1. The ATC has jurisdiction over this matter pursuant to Ind. Code 7.1-1-2-2; Ind. Code 7.1-2-3-9.
2. The permit application was properly submitted pursuant to Ind. Code 7.1-3-1-4.
3. The ATC is commissioned to act upon proper application. *Id.*
4. The Hearing Judge conducted a *de novo* review of the appeal on behalf of the ATC, including a public hearing. 905 IAC 1-36-7(a); Ind. Code 7.1-3-19-11.5
5. The Hearing Judge may consider as evidence all documents in the ATC File, including the transcript of proceedings and exhibits before the Local Board. 905 IAC 1-36-7(a)

6. The Hearing Judge may also consider as evidence any codes and standards that have been adopted by an agency of this state. 905 IAC 1-36-8(e)
7. Evidence at the hearing was received in accordance with the Indiana Administrative Code and the Commission's rules. The findings here are based exclusively upon the substantial and reliable evidence in the record of proceedings and on matters officially noted in the proceeding. 905 IAC 1-37-11(e); Ind. Code 4-21.5-3-27(d)
8. Joette J. Surrisi d/b/a City Tavern, permit #DL79-25457, is an applicant for renewal of an ATC Type 210-1 liquor, beer and wine permit.
9. The Commission, in its absolute discretion shall issue, suspend or revoke, except as otherwise provided in Title 7.1, a retailer's or dealer's permit of any type. Ind. Code 7.1-3-19-1
10. The Commission may investigate in any manner it deems best to enable it to act upon the application in a particular case. The Commission may grant or refuse the application accordingly as it deems the public interest will be served best. The action of the Commission for a retailer's or dealer's permit of any type shall be final. Ind. Code 7.1-3-19-10
11. The Commission may issue a liquor retailer's permit only to a high grade club, restaurant, or hotel, which has a high and fine reputation for decency and law obedience. In no case shall a liquor retailer's permit be issued or stand unrevoked if the owner, manager or management of the establishment is not a person of strict integrity and high repute, or if the premises have been padlocked. Ind. Code 7.1-3-9-10.
12. In determining an applicant's, or permittee's eligibility to hold, renew or continue to hold a permit, particularly whether the applicant is of good moral character and of good repute, the Commission shall consider whether acts or conduct of the applicant, permittee or his employees or agents, would constitute action or conduct prohibited by the Indiana Penal Code (IC 35-41-1-1 *et. seq.*), or a criminal offense under the laws of the United States. 905 IAC 1-27-1
13. If a licensed premises becomes a public nuisance, or the licensed premises becomes the scene of acts or conduct which are prohibited by the Indiana Penal Code (IC 35-41-1-1 *et. seq.*), or by the criminal laws of the United States, the premises shall be subject to the sanctions specified in IC 7.1-2-6-1 through IC 7.1-2-6-14. 905 IAC 1-27-2
14. A public nuisance includes, but is not limited to, the business property of a person who knowingly or intentionally sells, possesses, manufactures, barter, gives away alcoholic beverages in violation of law or rule of the commission. Ind. Code 7.1-2-6-1
15. The definition of a permittee includes an agent, a servant or other person acting on behalf of the permittee, whenever a permittee is prohibited from doing an act under this title. Ind. Code 7.1-1-3-30(b)

16. A minor means a person less than twenty-one (21) years of age. Ind. Code 7.1-1-3-25
17. It is unlawful for a person to recklessly, knowingly or intentionally sell, barter, exchange, provide or furnish an alcoholic beverage to a minor. Ind. Code 7.1-5-7-8
18. It is unlawful for a permittee to recklessly permit a minor to be in the prohibited place beyond a reasonable time in which an ordinary, prudent person can check identification, or confirm the age of a patron. Ind. Code 7.1-5-7-10(b)
19. A prohibited place includes a tavern, a bar, or other public place where alcoholic beverages are sold, bartered, exchanged, and given away, provided or furnished. Ind. Code 7.1-5-7-10(a)
20. Minors are not allowed on retail permit premises, except as provided in IC 7.1-5-7-11 and IC 7.1-5-7-13 see also 905 IAC 1-15.2-1 and 905 IAC 1-15.2-2
21. Mr. Surrisi, and the waitress and bartender were agents or other persons acting on behalf of the permittee, Joette J. Surrisi d/b/a City Tavern, during the times they were interacting with the Excise Officers regarding the permit premises and the violations charged. Ind. Code 7.1-1-3-30(b)
22. A permit is fully expired and null and void at the end of the term for which it is issued. Ind. Code 7.1-3-1-3
23. The weight of the evidence and the burden of proof establish that the permittee, individually and by and through her relationships with her waitress(es), bartender(s) and husband, have engaged in the following conduct:
  - a) Failing a compliance check by serving a minor alcoholic beverages and allowing a minor to loiter, while at the same time acting without a valid permit.
  - b) Operating the permit premises for multiple months during 2009 without a valid permit.
  - c) Repeatedly making untrue statements regarding the permittee's permit status to Excise Officers.
24. The conduct of the permittee and her agents violates multiple statutes contained in Title 7.1 and rules contained in 905 IAC including, but not limited to the following:
  - a) IC 7.1-3-9-10; 905 IAC 1-27-1 Failure to maintain a high and fine reputation.
  - b) IC 7.1-2-6-1; 905 IAC 1-27-2 Becoming a public nuisance.
  - c) IC 7.1-3-1-3 Operating on an expired permit.
  - d) IC 7.1-3-1-20 Failure to display a valid permit.
  - e) IC 7.1-5-7-8 Sale of alcoholic beverage to a minor.
  - f) IC 7.1-5-7-10 Allowing a minor to loiter.

23. The Local Board denied this permit renewal with sufficient evidence that supports a finding that this permit renewal request should be denied.

Therefore, it is ORDERED, ADJUDGED AND DECREED that the finding of the Local Board to deny this application for renewal was based on substantial evidence and must be upheld.

It is hereby further ORDERED, ADJUDGED AND DECREED that the evidence adduced at the LB Hearing and the Appeal Hearing was against the Applicant, and the appeal of Joette J. Surrisi d/b/a City Tavern for renewal of this Type 210-1 permit, Permit No. RR50-20074, applied for at its Culver, Indiana store location is hereby DENIED.

DATED: \_\_\_\_\_

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E. Edward Dunsmore  
Hearing Judge